

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:
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PCT

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

		Date of mailing (day/month/year)	10 MAY 2005
Applicant's or agent's file reference KEDI 8309WO		FOR FURTHER ACTION See paragraph 2 below	
International application No. PCT/US05/03399	International filing date (day/month/year) 28 January 2005 (28.01.2005)	Priority date (day/month/year) 29 January 2004 (29.01.2004)	
International Patent Classification (IPC) or both national classification and IPC IPC(7): A61B 5/00 and US Cl.: 600/559			
Applicant EVEREST BIOMEDICAL INSTRUMENTS CO.			

1. This opinion contains indications relating to the following items:

- Box No. I Basis of the opinion
- Box No. II Priority
- Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- Box No. IV Lack of unity of invention
- Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- Box No. VI Certain documents cited
- Box No. VII Certain defects in the international application
- Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US Mail Stop PCT, Attn: ISA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703) 305-3230	Authorized officer Brian Szmal Telephone No. (703) 308-0858
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International application No.

PCT/US05/03399

Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 This opinion has been established on the basis of a translation from the original language into the following language _____, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material
 a sequence listing
 table(s) related to the sequence listing
 - b. format of material
 in written format
 in computer readable form
 - c. time of filing/furnishing
 contained in international application as filed.
 filed together with the international application in computer readable form.
 furnished subsequently to this Authority for the purposes of search.
3. In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

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Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims <u>2-4, 6-8, 23</u>	YES
	Claims <u>1, 5, 9-22, 24, 25</u>	NO
Inventive step (IS)	Claims <u>6-8, 23</u>	YES
	Claims <u>1-5, 9-22, 24, 25</u>	NO
Industrial applicability (IA)	Claims <u>1-25</u>	YES
	Claims <u>NONE</u>	NO

2. Citations and explanations:

Claims 1, 5, 9-22, 24 and 25 lack novelty under PCT Article 33(2) as being anticipated by Meyerson et al (6,589,189).

Claims 2-4 lack an inventive step under PCT Article 33(3) as being obvious over the prior art as applied in the immediately preceding paragraph and further in view of Smits et al (6,544,190). Meyerson et al, as discussed above, disclose a means of monitoring intracranial pressure utilizing a respirator in an embodiment. Meyerson et al, however fail to explicitly disclose a gas monitoring means for determining the concentration of carbon monoxide and carbon dioxide.

Smits et al disclose an end tidal breath analyzer and further disclose a gas monitoring means for determining the concentration of carbon monoxide and carbon dioxide.

Since Meyerson et al disclose the use of a ventilator, and Smits et al disclose the use of measuring end tidal breath components, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Meyerson et al to include the measurement of carbon monoxide and carbon dioxide, as per the teachings of Smits et al, since it is well known in the art that a ventilator measures breath components to ensure a proper gas mixture for introduction to the patient.

Claims 6-8 and 23 meet the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest determining hemolysis or lactose malabsorption in the patient in conjunction with an auditory response testing means.

Claims 1-25 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.